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More than a Footnote in History: The Single-Purpose Container Exception

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I. Introduction

The bane of law students and a useful tool for scholars, the lowly footnote has a long and acrimonious history in scholarly works. Often overlooked by students because of its perceived insignificance, scholars use the footnote to lend legitimacy to their own works by adding much-needed authority or credibility. Throughout Supreme Court opinions, the seemingly trivial footnote can have an ostensibly disproportionate impact on modern jurisprudence. One¹ of the most evident examples of this was in *Arkansas v. Sanders*, where the court declared in the thirteenth footnote that a reasonable expectation of privacy does not extend to certain containers because “their contents can be inferred from their outward appearance.”² At first glance, the *Sanders* footnote may seem as “innocuous” as the white powder found in *United States v. Miller*,³ but over 30 years later courts still wrestle with the application of this footnote. Eventually deemed the “single-purpose container exception,”⁴ the *Sanders* footnote has been construed as an exception to the Fourth Amendment’s warrant requirement, potentially impacting an individual’s privacy interests.

The Fourth Amendment guards against unreasonable searches and seizures, specifically providing that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath

¹ Felix Gilman, *The Famous Footnote Four: A History of the Carolene Products Footnote*, 46 S. TEX. L. REV. 163, 165 (stating that footnote four of *United States v. Carolene Products Co.* “has become the most famous footnote in constitutional law” and introduced the idea of different levels of scrutiny).

² *Arkansas v. Sanders*, 442 U.S. 753, 764 n.13 (U.S. 1979), *overruled on other grounds by* *California v. Acevedo*, 500 U.S. 565 (U.S. 1991).

³ *United States v. Miller*, 769 F.2d 554, 555 (9th Cir. 1985).

⁴ *Id.* at 559.

or affirmation, and particularly describing the place to be searched, and the persons or things to be seize.⁵

As consistently demonstrated in case law, the Fourth Amendment does not actually require that searches or seizures be conducted pursuant to a warrant, it merely mandates “that warrants which *may* issue shall only issue upon probable cause.”⁶ Although the Fourth Amendment affords broad protection to individuals from governmental intrusion, the amendment is subject to several limitations, restricting its scope. The amendment only protects individuals from “searches” and “seizures” perpetrated by government agents.⁷ It does not prohibit searches and seizures conducted by private persons.⁸ If an initial search occurs that is not prohibited by the Fourth Amendment, such as a search conducted by a private party, then a later search by an officer would not violate the Fourth Amendment as long as it did not exceed the scope of the original private search.⁹ Under the amendment, a search occurs when an individual’s reasonable expectation of privacy is invaded.¹⁰ When determining whether a search is reasonable, the general approach under current Fourth Amendment jurisprudence is to examine the totality of the circumstances.¹¹

Exceptions to the Fourth Amendment¹² have been established by the courts where it has been determined that the public interest requires some flexibility in the application

⁵ U.S. CONST. amend. IV.

⁶ *Robbins v. California*, 453 U.S. 420, 427 (U.S. 1981)(Rhenquist J., dissenting), *overruled on other grounds* by *United States v. Ross*, 456 U.S. 798 (1982).

⁷ *Id.* at 113.

⁸ *United States v. Donnes*, 947 F.2d 1430, 1434 (10th Cir. 1991).

⁹ *United States v. Jacobsen*, 466 U.S. 109, 115 (U.S. 1984).

¹⁰ *Id.*

¹¹ *Samson v. California*, 547 U.S. 843, 848 (U.S. 2006)(explaining that the reasonableness of a search “is determined by assessing, on the one hand, the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.”).

¹² *Texas v. Brown*, 460 U.S. 730, 735-736 (U.S. 1983).

of the warrant requirement to searches.¹³ Due to this need for flexibility, there are “a few specifically established and well-delineated exceptions”¹⁴ where the protections of the Warrant Clause may be suspended.¹⁵ These exceptions are applied when the societal costs¹⁶ of obtaining a warrant outweigh the need for seeking the impartial opinion of a magistrate.¹⁷

Regardless of these certain exceptions, probable cause is still generally required for any search or seizure conducted by a police officer.¹⁸ When determining whether probable cause exists, courts have generally moved away from the objective, reasonable person standard and toward the viewpoint of an objectively reasonable police officer, giving “due weight to inferences” made by law enforcement officers.¹⁹ Probable cause is a “common-sense standard” that does not require the officer’s belief to actually be correct.²⁰ Instead, it requires the facts or circumstances before an officer to be of the type to warrant a reasonably prudent officer to believe that an offense has been committed.²¹

Once probable cause is established the next inquiry is whether a person retains a reasonable expectation of privacy.²² Courts are split on the standard used when deciding whether a container reveals its contents under the single-purpose container exception, eliminating any reasonable expectation of an individual’s privacy interest.²³ This note examines the history of the single-purpose container and the circuit split it has created.

¹³ *Arkansas v. Sanders*, 442 U.S. 753, 759 (U.S. 1979).

¹⁴ *United States v. Ross*, 456 U.S. 798, 825 (1982).

¹⁵ *Sanders*, 442 U.S. at 759.

¹⁶ *Id.* (noting circumstances including “danger to law officers or the risk of loss or destruction of evidence.”).

¹⁷ *Id.*

¹⁸ *Arizona v. Hicks*, 480 U.S. 321, 326 (U.S. 1987).

¹⁹ *Ornelas v. United States*, 517 U.S. 690, 699 (U.S. 1996).

²⁰ *Texas v. Brown*, 460 U.S. 730, 742 (U.S. 1983).

²¹ *Carroll v. United States*, 267 U.S. 132, 161 (U.S. 1925).

²² Stephen Jones, *Reasonable Expectations of Privacy: Searches, Seizures, and the Concept of Fourth Amendment Standing*, 27 U. MEM. L. Rev. 907, 914 (1997).

²³ *United States v. Tejada*, 524 F.3d 809, 813 (7th Cir. 2008).

Part II(A) of this note will cover the reasonable expectation of privacy, while Parts II(B) and II(C) will discuss the plain view doctrine and the single-purpose container exception, respectively. Part III will examine the circuit split that has been created by the *Sanders* footnote. Specifically, Part III(A) will look at the 4th and 7th Circuits' approach to the single-purpose exception, which considers the totality of the circumstances, giving due deference to the subjective inferences made by the searching officer. Part III(B) will look at the approach taken by the 1st, 5th, 9th, and 10th Circuits, which consider only whether the outward appearance of a container reveals its contents to a reasonable layperson. Finally, Part III(C) analyzes the circuit split, arguing that an analysis that focuses solely on an objective layperson's inferences is too restrictive, the evaluation of the nature of the container should be from the perspective of a police officer, accounting for the officer's training, expertise, and experience, and that the totality of circumstances should be weighed in determining the existence of a single-purpose container.

II. Background

A. A Reasonable Expectation of Privacy under the Fourth Amendment

An individual's right to privacy under the Fourth Amendment is the "right to be let alone by other people."²⁴ To determine whether an individual has a Fourth Amendment privacy right, modern courts apply the reasonable expectation of privacy test, formulated by Justice Harlan in his concurrence in *Katz v. United States*.²⁵ The reasonable expectation of privacy test has two requirements: The person must have an actual, subjective expectation of privacy, and that expectation must be one that society

²⁴ *Katz v. United States*, 389 U.S. 347, 350 (U.S. 1967).

²⁵ *Jones*, *supra* note 22, at 914.

believes is reasonable.²⁶ Prior to *Katz*, the Supreme Court constricted privacy protection under the Fourth Amendment only to physical intrusions on tangible objects.²⁷ In *Katz*, the Supreme Court parted ways with this narrow view and recognized that Fourth Amendment protection extended to include intangible items as well.²⁸ The broad interpretation of the Fourth Amendment adopted by the *Katz* Court allowed the amendment to adapt to the contemporary times and marked a “new” way to view an individual’s right to privacy.²⁹

When determining whether a reasonable expectation of privacy exists, courts must also balance an individual’s privacy rights with the promotion of legitimate government interests.³⁰ In *Maryland v. Buie*, the Supreme Court stated, “in determining reasonableness, we have balanced the intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.”³¹ Under this test, although a search is generally not reasonable unless it is accompanied by a warrant on probable cause, there are certain contexts where a warrant or probable cause is not required for the sake of the public interest.³² One example where the promotion of a legitimate interest of the government outweighs an individual’s privacy interests under the Fourth Amendment can be found in *Carroll v. United States*.³³ In *Carroll*, the Supreme Court established an exception to the warrant requirement for moving

²⁶ *Katz*, 389 U.S. at 361 (Harlan J., concurring).

²⁷ *Olmstead v. United States*, 277 U.S. 438, 465 (U.S. 1928).

²⁸ *Katz*, 389 U.S. at 355.

²⁹ *Jones*, *supra* note 22, at 914 (“*Katz* represents the “new” way of thinking about the Fourth Amendment and how it protects individuals.”).

³⁰ *Samson v. California*, 547 U.S. 843, 848 (U.S. 2006).

³¹ *Maryland v. Buie*, 494 U.S. 325, 331 (U.S. 1990).

³² *Id.*

³³ 267 U.S. 132, 153 (U.S. 1925)

vehicles.³⁴ The Court stated that it would be impracticable to require officers to obtain a warrant before searching a vehicle because “the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought,” thus impeding law enforcement.³⁵ Years later, the Supreme Court would once again find that an individual’s privacy rights were outweighed by law enforcement’s interests in *Terry v. Ohio*.³⁶ In *Terry*, the Supreme Court upheld a “stop-and-frisk” search of a suspect that was performed without a warrant or even probable cause.³⁷ The court upheld the search on the grounds that the officer not only had a reasonable basis to believe that the suspect was armed, but there was a prevailing public interest in the officer taking swift action.³⁸ In determining whether the swift action taken by the officer was necessary, the court gave deference to the experience and subjective inferences made by the officer.³⁹

The surrounding circumstances of a search may also affect a person’s reasonable expectation of privacy. In *California v. Ciraolo*, after receiving an anonymous tip, police officers observed and took pictures of marijuana plants growing in the suspect’s backyard from a private airplane.⁴⁰ Based on the pictures taken from the flight, the officers then obtained a warrant to seize the marijuana plants.⁴¹ Considering the circumstances of the case, the court held that the suspect did not have a reasonable expectation of privacy from all observations in his backyard.⁴² Even though the area was within the “curtilage”⁴³ and

³⁴ *Id.*

³⁵ *Id.*

³⁶ 392 U.S. 1, 30 (U.S. 1968).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 23.

⁴⁰ 476 U.S. 207, 209 (U.S. 1986).

⁴¹ *Id.* at 209-10.

⁴² *Id.* at 212.

⁴³ *United States v. Dunn*, 480 U.S. 294, 300(1987)(noting that curtilage originated from common law to extend to the area immediately surrounding a dwelling. The Fourth Amendment protects the curtilage of a

the suspect had erected a fence to obstruct the public view of the street,⁴⁴ the court examined the context of the search and the fact that the marijuana plants were not enclosed, open to view from the public airspace, as justification for its holding.⁴⁵ Although Ciraolo may have had a subjective expectation of privacy, since his plants were open to public view, that expectation was not objectively reasonable and thus was not protected.⁴⁶ Like the marijuana plants in *Ciraolo*, items that can be observed in “plain view” have no expectation of privacy.

B. The Plain View Doctrine

One of the traditional exceptions to the Fourth Amendment’s warrant requirement is the plain view doctrine. Under the plain view doctrine, there is no invasion of privacy when an object is observed in plain view of a public space.⁴⁷ Obviously, when an object is exposed to the plain view of the public, no reasonable person could have a reasonable expectation of privacy in that object.⁴⁸ Therefore, there is no need for a search warrant.⁴⁹ The doctrine is based on the theory that once a police officer is lawfully in a position to observe an item,⁵⁰ and it is exposed to the general public, “its owner's privacy interest in that item is lost.”⁵¹

house. “The extent of the curtilage is determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself.”).

⁴⁴ *Ciraolo*, 476 U.S. at 209.

⁴⁵ *Id.* at 212-14.

⁴⁶ *Id.* at 215.

⁴⁷ *Horton v. California*, 496 U.S. 128, 138 (U.S. 1990).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Arizona v. Hicks*, 480 U.S. 321, 328 (U.S. 1987)(stating that “looking at what is already exposed to view” does not constitute a search).

⁵¹ *Illinois v. Andreas*, 463 U.S. 765, 771 (U.S. 1983).

The plain view doctrine allows a police officer to conduct a warrantless seizure only when two conditions are met.⁵² First, as discussed above, the officer must “lawfully make an initial intrusion or otherwise properly be in a position from which he can view a particular area.”⁵³ Second, it must be “immediately apparent” to the officer that the items observed may be subject to seizure.⁵⁴ Prior to 1990, the plain view doctrine also required that the evidence discovered by the officer be made “inadvertently.”⁵⁵ In *Horton v. California*, the Supreme Court rejected this third requirement, stating “evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.”⁵⁶

In *Arizona v. Hicks*, the Supreme Court held that probable cause is required for an officer seizing an object under the plain view doctrine.⁵⁷ The court in *Hicks* reasoned that, during an unrelated search and seizure, an object should not be seizable on grounds lesser than those needed to obtain a warrant.⁵⁸ Since *Hicks*, courts have “recognized that a law enforcement officer may rely on his training and experience to draw inferences and make deductions that might well elude an untrained person.”⁵⁹ This deferral to police officers includes their determination of objects within plain view.⁶⁰ Although deference is given to officers to determine objects that are in plain view, the Supreme Court has held that the doctrine would not be extended to general exploratory searches between objects until

⁵² *Texas v. Brown*, 460 U.S. 730, 737 (U.S. 1983).

⁵³ *Id.* (internal citations omitted).

⁵⁴ *Id.*

⁵⁵ *Coolidge v. New Hampshire*, 403 U.S. 443, 467-68 (U.S. 1971).

⁵⁶ *Horton v. California*, 496 U.S. 128, 138 (U.S. 1990) (positing that the fact that an officer expects to find an item of evidence in the course of a search should not invalidate the seizure).

⁵⁷ *Arizona v. Hicks*, 480 U.S. 321, 326 (U.S. 1987)

⁵⁸ *Id.* at 327.

⁵⁹ *Texas v. Brown*, 460 U.S. 730, 746 (U.S. 1983) (Powell J., concurring).

⁶⁰ *Id.*

something incriminating emerges.⁶¹ Instead, deference is only given to officers where it is immediately apparent that they have evidence before them.⁶²

Although the plain view doctrine may allow the warrantless seizure of an item, it does not allow for a warrantless search of the contents of that item.⁶³ In *United States v. Jacobsen*, the Supreme Court stated “even when government agents may lawfully seize such a package to prevent loss or destruction of suspected contraband, the Fourth Amendment requires that they obtain a warrant before examining the contents of such a package.”⁶⁴ As a general rule, when an officer lawfully seizes a container or package without a warrant, the officer is still required to obtain a warrant before searching the item.⁶⁵ There are several exceptions to this general rule, such as searches incident to a lawful arrest or inventory searches.⁶⁶ A lesser-known and more controversial exception that the courts have established is the single-purpose container exception.

C. The Single-Purpose Container Exception

The single-purpose container exception to the warrant requirement of the Fourth Amendment was created in footnote thirteen of *Arkansas v. Sanders*.⁶⁷ In that footnote, the Supreme Court posited that not all containers and packages found by police officers would deserve full protection under the Fourth Amendment.⁶⁸ The court stated, “some

⁶¹ *Coolidge*, 403 U.S. at 466 (U.S. 1971)(internal quotations omitted).

⁶² *Id.*

⁶³ *United States v. Miller*, 769 F.2d 554, 557 (9th Cir. 1985)(“The plain view exception permits seizure of incriminating evidence, but does not authorize a warrantless search for concealed evidence.”).

⁶⁴ *United States v. Jacobsen*, 466 U.S. 109, 115 (U.S. 1984).

⁶⁵ *Horton v. California*, 496 U.S. 128, 141 n.11 (U.S. 1990)(noting that the seizure of a container under the plain view doctrine ordinarily “does not compromise the interest in preserving the privacy of its contents because it may only be opened pursuant to either a search warrant, or one of the well-delineated exceptions to the warrant requirement.”).

⁶⁶ *Brown*, 460 U.S. at 735-36.

⁶⁷ *Arkansas v. Sanders*, 442 U.S. 753, 764 n.13 (U.S. 1979).

⁶⁸ *Id.*

containers (for example a kit of burglar tools or a gun case) by their very nature cannot support a reasonable expectation of privacy because their contents can be inferred from their outward appearance.”⁶⁹ Fundamentally, the court in *Sanders* stated that not all containers are “created equal in terms of one’s privacy expectation in them.”⁷⁰

In *Robbins v. California*, the Supreme Court expanded upon the exception, asserting it to be a variation of the plain view doctrine.⁷¹ The court’s plurality held that “unless the container is such that its contents may be said to be in plain view, those contents are fully protected by the Fourth Amendment.”⁷² Ordinarily, a warrant is necessary before police may open a closed container because by concealing the contents from plain view, the possessor creates a reasonable expectation of privacy.⁷³ But, if the characteristics or configuration of the container are such that it “proclaims its contents,” the contents are considered to essentially be in plain view and no reasonable privacy expectation is present.⁷⁴ Similar to objects that sit out in the open, exposed to the public, the contents of some containers are treated like objects observed in plain view. Like items seized under the plain view doctrine, since the contents of a single-purpose container is considered to be open to public view, no actual Fourth Amendment “search” occurs when the container is examined because no expectation of privacy can exist.⁷⁵ Because single-

⁶⁹ *Id.*

⁷⁰ *United States v. Sylvester*, 848 F.2d 520, 524 (5th Cir. 1988).

⁷¹ *Robbins v. California*, 453 U.S. 420, 427 (U.S. 1981)

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* (“If the distinctive configuration of a container proclaims its contents, the contents cannot fairly be said to have been removed from a searching officer’s view.”).

⁷⁵ *United States v. Davis*, 2012 U.S. App. LEXIS 17217, *136 (4th Cir. Aug. 16, 2012)(stating that since the contents of the container was a foregone conclusion to the officer, his “observation of those contents did not constitute a search, and thus a search warrant was unnecessary”).

purpose containers so clearly announce their contents to an observer, they are effectively transparent.⁷⁶

Applying the *Sanders* footnote, the *Robbins* court held that the single-purpose container exception did not justify the warrantless search of packages described as “plastic wrapped green blocks” that were found in the defendant's trunk.⁷⁷ In coming to its decision, the plurality disregarded that the officers had smelled marijuana smoke when the defendant opened his car door; that marijuana and drug paraphernalia was found in the passenger compartment of the car; and the suspect's statements to the officer.⁷⁸ The conviction was overturned because the prosecution could not establish that marijuana was ordinarily “packaged this way.”⁷⁹ Instead, the court's reasoning countered the officer's testimony that “contraband was often wrapped in this fashion.”⁸⁰

In *Texas v. Brown*, the Supreme Court applied a different rationale to uphold the warrantless seizure of opaque balloons containing heroin.⁸¹ Unlike the court in *Robbins*, the *Brown* court took into consideration the circumstances surrounding the container and the experience of the officer, holding that “the distinctive character of the balloon itself spoke volumes as to its contents – *particularly to the trained eye of the officer.*”⁸² Although the majority in *Brown* did not reference the *Sanders* footnote and the single-

⁷⁶ United States v. Corral, 970 F.2d 719, 725 (10th Cir. 1992)(“[W]here the contents of a seized container are a foregone conclusion, [the] prohibition against the warrantless searches of containers under the plain view doctrine does not apply.”).

⁷⁷ *Robbins* 453 U.S. at 428.

⁷⁸ *Id.* at 422, 428.

⁷⁹ *Id.*

⁸⁰ *Id.* at 442 (Rehnquist J., dissenting).

⁸¹ *Texas v. Brown*, 460 U.S. 730, 744 (U.S. 1983).

⁸² *Id.* at 742 (emphasis added).

purpose container exception, Justice Stevens's concurrence posited, "the balloon could be one of those rare single-purpose containers."⁸³

Prior to *Robbins* and *Brown*, the Supreme Court briefly addressed the single-purpose container exception in a footnote in *Walter v. United States*.⁸⁴ In *Walter*, FBI agents conducted a warrantless search of a film box, inadvertently shipped to the wrong address, which depicted pornographic images and had explicit descriptions of the contents.⁸⁵ The court held the government search to be unreasonable because Walter's expectation of privacy should have been measured at the time he originally sent the container.⁸⁶ Since the film boxes sent were securely wrapped and had no markings indicating its contents, Walter had an expectation of privacy.⁸⁷ Although the court held the search to be unreasonable, the majority made the comparison to a gun case being delivered in the mail, noting that if the package had simply been a gun case there would be no expectation of privacy in that container.⁸⁸ But, if that same gun were delivered in a locked, nondescript suitcase, then there would be an expectation of privacy in its contents.⁸⁹ Applying the comparison to the facts of the case, had the film boxes not been in a container and had been mailed directly, it is likely that there would be no expectation of privacy in those containers and thus could have been searched by the FBI agents. This comparison could only be made if the FBI agents were allowed to consider the labels and depictions of the box making the film box's incriminating contents immediately

⁸³ *Id.* at 751 (Stevens J., concurring).

⁸⁴ *Walter v. United States*, 447 U.S. 649, 658 n.12 (U.S. 1980).

⁸⁵ *Id.* at 651-52.

⁸⁶ *Id.* at 658 n.12.

⁸⁷ *Id.* at 658-59.

⁸⁸ *Id.* at 658 n.12

⁸⁹ *Id.*

apparent.⁹⁰ Since the Supreme Court has not directly addressed this issue, or a concrete application of the *Sanders* footnote altogether,⁹¹ circuit courts have inconsistently applied the single-purpose container exception, creating a circuit split.

III. Analysis of The Circuit Split

All circuits agree on the constitutionality of the single-purpose container exception, but they disagree on how to determine the existence of a single-purpose container and whether the circumstances surrounding the search can be considered in making that determination.⁹² The 4th and 7th Circuits take the viewpoint that whether a container reveals its contents is determined by not only the configuration of the container itself, but the surrounding circumstances, including the officer's knowledge and experience.⁹³ The 1st, 5th, 9th, and 10th Circuits have taken the approach that the existence of a single-purpose container should be determined from an objective, reasonable person perspective and the extrinsic circumstances of the search should not be taken into consideration.⁹⁴

⁹⁰ *Texas v. Brown*, 460 U.S. 730, 736-37 (U.S. 1983)(stating that in order to seize an object in plain view the incriminating nature of the item must be immediately apparent).

⁹¹ *United States v. Miller*, 769 F.2d 554, 559 (9th Cir. 1985)(discussing the Supreme Court's interpretation of the single-purpose container exception in *Robbins*).

⁹² *Compare United States v. Gust*, 405 F.3d 797, 803 (9th Cir. 2005)(holding that "courts should assess the nature of a container primarily with reference to general social norms rather than solely . . . by the experience and expertise of law enforcement officers") (quotation marks omitted), *quoting United States v. Miller*, 769 F.2d 554, 560 (9th Cir. 1985) *with United States v. Williams*, 41 F.3d 192, 196-97 (4th Cir. 1994) (holding that a detective's experience could be used in assessing the character of a container).

⁹³ Allison M. Lucier, Comment, *You Can Judge a Container by Its Cover: The Single-purpose Container Exception and the Fourth Amendment*, 76 U. Chi. L. Rev. 1809, 1820.

⁹⁴ *Id.*

A. The 4th and 7th Circuit Approach

In *United States v. Williams*, the 4th Circuit upheld an officer's search of packages that were heavily wrapped in cellophane and a layer of brown opaque material.⁹⁵ The court reasoned that the packages closely resembled packages containing narcotics regularly seized by law enforcement.⁹⁶ The court noted that the suitcase the packages were found in contained only dirty blankets and towels, items not typical when a person is traveling.⁹⁷ The court also considered the fact that the officer conducting the search had ten years of experience in drug enforcement and, based on that experience, the officer testified that similarly wrapped packages had "always" contained narcotics.⁹⁸ This novel approach taken by the 4th Circuit was substantially different than the approaches taken by any other circuit applying the single-purpose container exception at that time.⁹⁹

Then, in *United States v. Davis*, the 4th Circuit reaffirmed and strengthened its position that an officer's knowledge and the surrounding circumstances may be taken into consideration when determining whether the contents of a container are immediately apparent.¹⁰⁰ In *Davis*, the defendant was charged with murder after his DNA was a "cold hit" with DNA found at a murder scene.¹⁰¹ Four years prior, the defendant had previously been shot in the leg and at the hospital an officer searched the plastic hospital bag containing the defendant's clothes.¹⁰² The blood on the defendant's clothes was later used

⁹⁵ *United States v. Williams*, 41 F.3d 192, 198 (4th Cir. 1994).

⁹⁶ *Id.*

⁹⁷ *Id.* ("[T]he contents of the suitcase also spoke volumes.").

⁹⁸ *Id.* at 194.

⁹⁹ Compare *United States v. Williams*, 41 F.3d 192, 198 (4th Cir. 1994) (considering the searching officer's years of experience and the "very unusual" items that accompanied the container) with *United States v. Miller*, 769 F.2d 554, 560 (9th Cir. 1985) (rejecting the assertion that the searching officer's "considerable experience and expertise in drug enforcement" made the contents apparent).

¹⁰⁰ *United States v. Davis*, 2012 U.S. App. LEXIS 17217, *21 (4th Cir. Aug. 16, 2012).

¹⁰¹ *Id.* at *3-*9.

¹⁰² *Id.*

to create a DNA profile when he was suspected of committing a previous murder.¹⁰³ The court noted the officer's knowledge of the hospital's practice of placing patients' clothing in a bag on the shelf under the bed, the fact that the officer was aware the defendant was shot in the leg, and that defendant only had a hospital gown on as reasons why the contents of the bag were a forgone conclusion and could be searched.¹⁰⁴ The fact that the bloody clothing with a bullet hole would be incriminating evidence against the shooter was also immediately apparent, to both the officer and the court.¹⁰⁵

In *United States v. Tejada*, the 7th Circuit noted the circuit split but decided not to expressly take any one side because the search of a bag containing cocaine had already been validated by inevitable discovery.¹⁰⁶ Although the court did not explicitly take a side in the circuit split, the court in dicta conjectured that requiring a warrant to search a container when its contents are known to contain contraband or other incriminating evidence "is far from the core of the Fourth Amendment."¹⁰⁷ Additionally, based on the 7th Circuit's previous opinion in *United States v. Cardona-Rivera*, the court would likely examine the surrounding circumstances in deciding whether a container revealed its contents. In *United States v. Cardona-Rivera*, the 7th Circuit upheld the search and seizure of packages that were recognized by the officers as "bricks" of cocaine.¹⁰⁸ The court noted that once the defendant disclosed that the container held contraband, there was no reasonable privacy interest that could be invaded when the officers opened the package, regardless if a warrant was present.¹⁰⁹ In *Cardona-Rivera*, Judge Posner also

¹⁰³ *Id.*

¹⁰⁴ *Id.* at *23.

¹⁰⁵ *Id.* at *25.

¹⁰⁶ 524 F.3d 809, 813 (7th Cir. 2008).

¹⁰⁷ *Id.* at 814.

¹⁰⁸ *United States v. Cardona-Rivera*, 904 F.2d 1149, 1154 (7th Cir. 1990).

¹⁰⁹ *Id.* at 1156.

noted that if the question of when a container revealed its contents were presented to the Supreme Court, a majority of Justices would likely take into consideration the circumstances surrounding the container.¹¹⁰

The 4th and 7th Circuits take a practical approach to determining the existence of a single-purpose container. The two circuits recognize that containers are not found in a vacuum and are willing to consider the surrounding circumstances prior to the search. Distinctive configuration, labels and disclosures made by suspects, the proximity of contraband, and the subjective inferences based on prior experience made by the searching officer will all be taken into account to determine whether the contents of a container are a forgone conclusion.

B. The 1st, 5th, 9th, and 10th Circuits' Approach

The approach taken by the other circuits in applying the exception is drastically different than that taken by the 4th and 7th Circuits. In *United States v. Meada*, the 1st Circuit applied a reasonable layperson standard in deciding whether firearms and ammunition found in several closed containers, which, in the context of the case, belonged to a convicted felon that was prohibited from owning such items, received a privacy expectation.¹¹¹ The court held that the defendant did have a reasonable expectation of privacy in the ammunition can because the appearance of the can itself did not reveal its contents to the average person.¹¹² Although the defendant had an expectation of privacy in the ammunition can, the court ruled any privacy interests the

¹¹⁰ *Id.* at 1155 (“Several Justices -- almost certainly a majority -- believe however that if the shape or other characteristics of the container, taken together with the circumstances in which it is seized (from a suspected drug dealer, or a harmless old lady?), proclaim its contents unambiguously, there is no need to obtain a warrant.”).

¹¹¹ 408 F.3d 14, 24 (1st Cir. 2005).

¹¹² *Id.* at 19.

contents of the container holding the firearms was eliminated because the container was “readily identifiable as a gun case and included a ‘GUN GUARD’ label.”¹¹³ While the 1st Circuit limited the application of single-purpose container in *Meada*, the court did not completely eliminate its application. The court rejected *Meada*’s argument that if a container could *potentially* hold other items it did not clearly reveal its contents, noting that the *Sanders* exception would have no applicability if such a scenario could defeat it.¹¹⁴

The 5th Circuit has taken an even narrower approach than the 1st Circuit when determining the existence of a single-purpose container. In *United States v. Sylvester*, the 5th Circuit held that a container whose contents could not be deduced simply by looking at it fell outside of the scope of the *Sanders* footnote.¹¹⁵ The defendants in *Sylvester* were cited for hunting on a baited field after a U.S. Fish and Wildlife Service agent searched through the defendant’s “hunting box” near the baited area.¹¹⁶ The court reasoned that although ammunition may often be carried in such boxes, the contents could not be inferred from the outward appearance of the box.¹¹⁷ Unlike the 1st Circuit in the aforementioned case, the 5th Circuit has held that labels on a container, do not necessarily destroy an individual’s privacy interest in that container.¹¹⁸ According to the 5th Circuit, even disclosures made by defendants about the contents of a container do not destroy a defendant’s privacy expectation.¹¹⁹ In *United States v. Villarreal*, customs agents searched a fifty-five gallon drum labeled as phosphoric acid without a warrant and

¹¹³ *Id.* at 23.

¹¹⁴ *Id.* at 24 (“The fact that, upon opening and careful inspection, the gun case might turn out to contain something other than a gun was irrelevant.”).

¹¹⁵ *United States v. Sylvester*, 848 F.2d 520, 525 (5th Cir. 1988).

¹¹⁶ *Id.* at 523.

¹¹⁷ *Id.* at 525.

¹¹⁸ *United States v. Villarreal*, 963 F.2d 770, 776 (5th Cir. 1992).

¹¹⁹ *Id.*

found marijuana inside.¹²⁰ The 5th Circuit held that although the drum was labeled, the label itself does not transform the container into a single-purpose container, allowing an officer to search its contents.¹²¹ The court in *Villarreal* also stated that even when a defendant informed a police officer of the contents of the container, he still preserved his privacy rights under the Fourth Amendment.¹²² The 5th Circuit departed from every other circuit in *Villarreal* by holding that the label on a container would not even be considered as part of the “outward appearance” of the container.¹²³ The 5th Circuit’s approach in *Villarreal* is by far the narrowest of any court’s application of the single-purpose container, nearly destroying the exception altogether.

The 9th Circuit joined the circuit split over the *Sanders* footnote in *United States v. Miller* where a Drug Enforcement Agency officer searched a clear plastic bag owned by the suspect that had punctured, spilling a white powder.¹²⁴ Although the white powder tested negative for cocaine in a field test, upon further examination of the bag, the officer found an opaque, fiberglass container that enclosed crystalline cocaine.¹²⁵ The 9th Circuit held that although the initial seizure of the bag was lawful under the plain view doctrine, the warrantless search of the bag was not.¹²⁶ The court stated that since “the bag did not have a distinctive shape or odor that identified its contents” it did not “announce to the observer” that it contained contraband and therefore could not be considered a single-purpose container.¹²⁷ The court rejected the government’s assertion that the contents of

¹²⁰ *Id.* at 772-73.

¹²¹ *Id.* at 776.

¹²² *Id.* (“It goes without saying that a defendant can orally inform a police officer what is in a container, yet stand on his rights and refuse to allow the officer to search that container.”).

¹²³ *Id.* (“[A] label on a container is not an invitation to search it.”).

¹²⁴ *United States v. Miller*, 769 F.2d 554, 555 (9th Cir. 1985).

¹²⁵ *Id.*

¹²⁶ *Id.* at 557.

¹²⁷ *Id.* at 560.

the bag were obvious to the searching officer because the circumstances surrounding the discovery of the bag and the officer's "considerable experience and expertise in drug enforcement" made the contents apparent.¹²⁸ In coming to its conclusion, the court distinguished the Supreme Court's decisions in *Brown*¹²⁹ and *Jacobsen*¹³⁰ on the grounds that those cases involved seizures rather than searches of a container, possibly implying that only the seizure of a single-purpose container may be based on an officer's experience and training.¹³¹

The 9th Circuit would later reestablish its stance that the viewpoint of a reasonable layman should be used in determining the existence of a single-purpose container in *United States v. Gust*.¹³² In *Gust*, The court found that a defendant's shotgun case was not a single-purpose container because "a layperson would not be able to infer the contents of the case based on its outward appearance alone."¹³³ The court disregarded the fact that the officers had received reports of gunshots in the area, that they both had first-hand experiences with similar gun cases, and that the label "BUSHMASTER," the name of a manufacturer and distributor of firearms, appeared on the case.¹³⁴ The court also noted concerns that officers may abuse their discretion if the single-purpose

¹²⁸ *Id.* (stating that the government's assertion conflicts with the plurality's opinion in *Robbins*, which "measures expectations of privacy with reference to general social norms.")

¹²⁹ *Id.* at 559 ("The *Brown* plurality did not mention footnote 13 of *Sanders*, and it decided a different issue from the one that footnote 13 addressed.").

¹³⁰ *Miller* 769 F.2d, at 559 ("Jacobsen does not control the outcome of this case because the question here is whether the single-purpose container exception justifies a warrantless search conducted by a government agent pursuant to a proper government seizure.").

¹³¹ *Id.*

¹³² *United States v. Gust*, 405 F.3d 797, 804 (9th Cir. 2005).

¹³³ *Id.*

¹³⁴ *Id.*

container exception were to apply without the restriction of the objective layperson as a standard.¹³⁵

The 10th Circuit joined the fray over the single-purpose container exception in *United States v. Bonitz* when the court rejected the contention that an officer's experience should be taken into consideration when a container reveals its contents.¹³⁶ In *Bonitz*, The court ruled that the hard plastic case that held an AR-15 rifle did not reveal its contents even though a firearms expert or the officers conducting the search may have been able to identify the plastic case as a gun case.¹³⁷ A vigorous dissent by Judge Baldock advocated for a more subjective approach, stating that the officers could reasonably surmise the contents of the container based on their experience, specialized knowledge, and the context in which the container was found.¹³⁸ Although the majority in *Bonitz* determined that an officer's experience could not be used to determine the existence of a single-purpose container, Judge Baldock's dissent indicated a potential divide among the circuit as to whether surrounding circumstances could be used to infer the contents of a container.

Four years later, in *United States v. Donnes*, the 10th Circuit approached the issue once again and reasserted its previous holding in *Bonitz* that only the configuration of the container itself would be considered when determining the existence of a single-purpose

¹³⁵ *Id.* at 802 (stating that holding otherwise, "could result in a rule that essentially permits law enforcement to conduct warrantless searches of indistinct and innocuous containers based solely on probable cause derived from the officers' subjective knowledge and the circumstances.").

¹³⁶ 826 F.2d 954, 956 (10th Cir. 1987).

¹³⁷ *Id.* (casting doubt that any hard plastic gun case could disclose its contents, opining that the Sanders footnote would probably only extend to "well-known, soft zippered gun cases.").

¹³⁸ *Id.* at 960 (Baldock J., dissenting) ("The search was conducted by experienced officers who had knowledge of defendant's felony conviction and acquisition of firearms, and who observed the hard plastic case among several soft-sided gun cases. The experienced officers were able to recognize the plastic case as a gun case, and could thus reasonably infer its contents.").

container.¹³⁹ In *Donnes*, the court held that an opaque, leather camera case did not qualify as a single-purpose container even though a syringe accompanied it, in plain view, when the container was initially found.¹⁴⁰ The court held that since the bindles of methamphetamines were found in a closed camera lens case made of black leather, that was placed inside a glove, and located on the floor of his house, “the defendant clearly manifested a reasonable expectation of privacy in the contents of the camera lens case.”¹⁴¹ Relying on *Bonitz*, the court casted doubt on whether the single-purpose container exception could ever be applied at all,¹⁴² stating that a container reveals its contents under the single-purpose exception only when the container is either not closed, transparent, or has a distinctive configuration.¹⁴³ The 10th Circuit reasoned that if it gave weight to the fact that the lens case was found with a syringe it would essentially “permit a warrantless search of any container found in the vicinity of a suspicious item.”¹⁴⁴ Such an expansion on the single-purpose container exception would likely increase the amount of warrantless searches of nondescript containers as long as the container was found near an item that could be considered suspicious.¹⁴⁵

As described above, the majority of circuits take an approach to the single-purpose container exception that is much narrower than the 4th and 7th Circuits’ approach. Instead of considering the extrinsic circumstances around the container, these circuits consider only the distinctive configuration of the container itself. When

¹³⁹ *United States v. Donnes*, 947 F.2d 1430, 1437 (10th Cir. 1991).

¹⁴⁰ *Id.* at 1439.

¹⁴¹ *Id.* at 1436.

¹⁴² *Id.* at 1438 (“If a hard plastic case containing a gun does not subject its contents to plain view, certainly a camera lens case does not subject its contents to plain view.”).

¹⁴³ *Id.* at 1437 (“[W]hen a container is not closed, or transparent, or when its distinctive configuration... proclaims its contents, the container supports no reasonable expectation of privacy and the contents can be said to be in plain view.”).

¹⁴⁴ *Id.* at 1438.

¹⁴⁵ *Donnes* 947 F.2d at 1437-38.

determining whether a container is a single-purpose container, the majority of circuits do not consider the searching officer's experience or subjective inferences, opting for a reasonable person standard instead.

C. Resolution to the Circuit Split

1. *An analysis that focuses solely on an objective layperson's inferences is too restrictive.*

A judicial approach that only considers how a reasonable layperson would view a container is too narrow of an approach if it does not consider the context in which the container was found or the surrounding circumstances. Situations often arise where there could be no reasonable expectation of privacy because the extrinsic circumstances around the container make its contents a foregone conclusion. For example, this type of situation arose in *Gust* when a suspect explicitly told the officer that there was a gun inside a suspicious looking container.¹⁴⁶ An admission of the sort should have been considered a waiver of the suspect's privacy interest, since the officer was effectively certain of the container's contents.¹⁴⁷ Under the approach taken by the court in *Gust*, however, the admission by the suspect was not even considered because the court only looked at the container on its face, not the context in which it was found.¹⁴⁸

An objective layperson perspective is also prone to as many, if not more, inconsistencies as the subjective officer perspective. For example, there have been inconsistent rulings where a suspect owned a gun case with the name of a firearm

¹⁴⁶ *United States v. Gust*, 405 F.3d 797, 802 (9th Cir. 2005).

¹⁴⁷ *United States v. Cardona-Rivera*, 904 F.2d 1149, 1156 (7th Cir. 1990)(stating that once the defendant "admitted that his package contained a contraband substance, no lawful interest of his could be invaded by the officers' opening the packages.").

¹⁴⁸ *Gust* 405 F.3d. at 802

manufacturer labeled on its exterior. In those cases, courts have disagreed over whether a layperson would be able to recognize the label and the firearm case.¹⁴⁹ In all three instances, however, the officers were able to determine that the cases contained a gun because of their prior experiences with firearms.¹⁵⁰

2. *The nature of the container should be determined from the perspective of a police officer and should account for the officer's training, expertise, and experience.*

The deference the single-purpose container exception provides to officers is undeniably beneficial to society because the productivity and efficiency of law enforcement increase as less time and resources are devoted to seeking search warrants. An evaluation from the perspective of the searching police officer provides indisputable flexibility to law enforcement. Decisions regarding whether a container clearly announced its contents are more easily made when officers are able to factor in their experience and the circumstances surrounding the discovery of the container. An objective layperson analysis requires a police officer to perform the difficult task of deciding if a container qualifies as a single-purpose container without taking into account his or her own experience or the circumstances.¹⁵¹ Instead, this standard forces officers to pretend that they are laypeople, something they are not and which is not easy to achieve. Any officer necessarily “views the facts through the lens of his police experience and expertise.”¹⁵² When determining the contents of a container, it would be unrealistic to

¹⁴⁹ Compare *United States v. Gust*, 405 F.3d 797, 804 (9th Cir. 2005) (“A layperson would not be able to infer the contents of the case based on its outward appearance alone.”) with *United States v. Meada*, 408 F.3d 14, 23 (1st Cir. 2005) (stating that the container was “readily identifiable as a gun case and included a ‘GUN GUARD’ label.”).

¹⁵⁰ *Gust* 405 F.3d. at 802.

¹⁵¹ *Id.* (“it is difficult to evaluate the nature of a container without regard for the context in which it is found or the fact that the searching officer had special reasons to believe the container held contraband”).

¹⁵² *Ornelas v. United States*, 517 U.S. 690, 699 (U.S. 1996).

expect an officer to separate himself from his experiences and first-hand knowledge. Not only that, but it would also be impractical to expect an officer to view specific containers from a layperson's perspective, since law enforcement officers are specifically trained to make determinations as to the possible contents of suspicious containers.

Officers are often given deference in their daily decision making because of their ability to spot incriminating activity.¹⁵³ Because of their career experience, training, and first-hand knowledge, law enforcement officers are better equipped than a layperson in determining the types of containers or methods used for criminal activity.¹⁵⁴ A trained law enforcement officer has the ability to use objective facts that may seem insignificant to a layperson and use those facts to form a legitimate suspicion of a person or package that may be acted on.¹⁵⁵ The belief that considering the subjective perspective of a police officer to be a “sham” is simply unfounded.¹⁵⁶ The concern that using a subjective determination allows officers to act on a hunch, and when “the hunch proves to be correct and the arrest bears fruit, the court will hold . . . that the record firmly supports the detective's inference,”¹⁵⁷ is actually counter to what the Supreme Court has held in the past.¹⁵⁸ When considering an officer's subjective assessment of a situation, the court has held that “due weight must be given, not to his inchoate and unparticularized suspicion or ‘hunch,’ but to the specific reasonable inferences which he is entitled to draw from the

¹⁵³ *Hudson v. Michigan*, 547 U.S. 586, 603 (2006)(Kennedy J., concurring)(“Our system, as the Court explains, has developed procedures for training police officers and imposing discipline for failures to act competently and lawfully.”).

¹⁵⁴ *Texas v. Brown*, 460 U.S. 730, 746 (U.S. 1983)(Powell J., concurring)(“A law enforcement officer may rely on his training and experience to draw inferences and make deductions that might well elude an untrained person.”).

¹⁵⁵ *United States v. Cortez*, 449 U.S. 411, 419 (U.S. 1981).

¹⁵⁶ *United States v. Prandy-Binett*, 995 F.2d 1069, 1074 (D.C. 1993)(Edwards J., dissenting)(stating that if an officer's “hunch proves to be correct and the arrest bears fruit, the court will hold, as here, that the record firmly supports the detective's inference. This is a sham.”).

¹⁵⁷ *Id.*

¹⁵⁸ *Terry v. Ohio*, 392 U.S. 1, 27 (U.S. 1968).

facts in light of his experience.”¹⁵⁹ In *Terry v. Ohio*, the Supreme Court upheld an on-the-street search, or a “stop-and-frisk,” by a police officer as being reasonable under the Fourth Amendment.¹⁶⁰ In coming to its decision, the court examined the officer’s observations of the suspect, which led to the subsequent search.¹⁶¹ Like the searching officer in *Terry*, even when an officer subjectively believes that a container holds contraband, he will still be required to point to specific facts that established his belief.¹⁶² If the inferences made by the officer are not reasonable, then it is unlikely that the court will uphold the search.

Requiring an officer to obtain a warrant to search a container that he is virtually certain contains contraband or incriminating evidence can have negative implications on law enforcement.¹⁶³ Well-intentioned mistakes in the application of the single-purpose container exception by law enforcement officers can have significant consequences since the punishment for failure to obtain a search warrant can lead to the suppression of highly relevant evidence.¹⁶⁴ Confusion among officers between the application of the plain view doctrine and its byproduct, the single-purpose container exception, could expectedly lead to police error and the suppression of important evidence.¹⁶⁵ In order to seize an object under the plain view doctrine, the officer must be in a lawful position to view the item and the incriminating nature of the item must be immediately apparent.¹⁶⁶ When

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 30-31.

¹⁶¹ *Id.* at 21 (“[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”).

¹⁶² *Id.*

¹⁶³ *Robbins v. California*, 453 U.S. 420, 433 (U.S. 1981).

¹⁶⁴ *United States v. Tejada*, 524 F.3d 809, 813 (7th Cir. 2008).

¹⁶⁵ *Arkansas v. Sanders*, 442 U.S. 753, 768 (1979) (Blackmun J., dissenting) (Explaining that confusions in the law create difficulties for police, prosecutors, and the courts).

¹⁶⁶ *Texas v. Brown*, 460 U.S. 730, 736-37 (U.S. 1983).

determining whether the item's incriminating nature is immediately apparent, the officer "may rely on his training and experience to draw inferences and make deductions that might well elude an untrained person."¹⁶⁷ Allowing an officer to use his experience and training to seize an item in plain view but requiring that officer to use a layperson's perspective to determine whether that same item can be searched creates two conflicting standards that may cause confusion and impede law enforcement.¹⁶⁸ In *Acevedo*, the Supreme Court overturned *Sanders* because it conflicted with the *Carroll*-doctrine cases and caused confusion among the courts and officers, obstructing effective law enforcement.¹⁶⁹ The court reasoned that it would be more efficient to adopt a single, clear-cut rule to govern automobile searches.¹⁷⁰ Likewise, adopting one clear-cut standard in deciding when an item is seizable under the plain view doctrine and searchable as a single-purpose container would remove confusion by police officers and reduce inconsistencies among the courts.¹⁷¹ Although an individual's privacy rights from seizures is distinct from their privacy rights from searches, the opening of a container is not generally seen as being that much more intrusive than the seizure of the same container.¹⁷² Since the privacy distinction between a search and a seizure under the Fourth Amendment is minute, a plain view interpretation that allows an officer to search

¹⁶⁷ *Id.* at 746 (Powell J., concurring).

¹⁶⁸ *Robbins* 453 U.S. at 436 (Blackmun J., dissenting)(explaining that the standards for searching containers in an automobile under *Chadwick* and *Sanders* conflicted with the Court's holding in *Carroll*, which could lead to confusion over proper procedure among law enforcement.)

¹⁶⁹ *California v. Acevedo*, 500 U.S. 565, 579 (U.S. 1991).

¹⁷⁰ *Id.*

¹⁷¹ Daniel Kegl, *The Single-Purpose Container Exception: A Logical Extension of the Plain View Doctrine Made Unworkable by Inconsistent Application*, 30 N. Ill. U. L. Rev. 237, 268 ("Just as the Supreme Court adopted one clear-cut rule to govern automobile searches, it needs to adopt an equally clear-cut rule to govern the single-purpose container exception so that its application is uniform across the circuits.").

¹⁷² Wayne R. LaFare, *Search and Seizure* § 6.7 (b) (2d ed. 1987).

a container when there is solid evidence of the container's contents should be attractive to courts and officers alike.¹⁷³

Permitting law enforcement officers to rely on their expertise and professional knowledge in determining whether a container reveals its contents under the single-purpose container exception properly balances individual privacy concerns and government interests. Requiring an officer to obtain a warrant to search a package or container in which they have probable cause or considerable evidence to believe that the package contains some type of contraband can substantially frustrate law enforcement efforts.¹⁷⁴ The ability of an officer to obtain a warrant is not always as easy as making a quick, half-mile trip to the nearest precinct.¹⁷⁵ The time expended on the process to secure a search warrant for a container the officer is virtually certain contains contraband is an inefficient use of police resources as that time could be spent on patrol, investigating crimes, or making arrests.¹⁷⁶ Overall, the productivity and efficiency of law enforcement would increase as less time and resources are devoted to obtaining search warrants. Additionally, an individual's privacy rights are not necessarily sacrificed when an officer uses his expertise to determine the existence of a single-purpose container under the *Sanders* footnote. Containers that fall under the single-purpose container exception are "rare."¹⁷⁷ Although it is possible that the scope of the exception may extend to more packages or containers when applying the specialized knowledge of a police officer, any

¹⁷³ *Id.*

¹⁷⁴ *Robbins*, 453 U.S. at 438 (Rhenquist J., dissenting).

¹⁷⁵ *Id.* at 438-39 (Rhenquist J., dissenting) ("[T]his casual assumption simply does not fit the realities of sparsely populated 'cow counties' located in some of the Southern and Western States, where at least apocryphally the number of cows exceed the number of people, and the number of square miles in the county may exceed 10,000 and the nearest magistrate may be 25 or even 50 miles away.").

¹⁷⁶ *Id.* at 433 (Powell C.J., concurring) (Stating that the process of obtaining a warrant "may take hours, removing the officer from his normal police duties.").

¹⁷⁷ *Texas v. Brown*, 460 U.S. 730, 751-52 (U.S. 1983) (Stevens J., concurring).

expansion would be minimal. It would be unlikely that the characteristics of nondescript containers, like a backpack or a purse, could “proclaim its contents,” even to the trained eye of an officer.¹⁷⁸

3. *The totality of circumstances should be weighed in determining the existence of a single-purpose container.*

The surrounding circumstances and the context in which a container is found should be taken into consideration because these containers are not found in a vacuum. It would be unreasonable to expect an officer to view each container he or she comes across as being in a bubble, separate from the outside world. Circumstances and locations often play a major part in determining whether a reasonable expectation of privacy exists.¹⁷⁹ For example, an individual’s expectation of privacy changes when the person is in a vehicle or in their home.¹⁸⁰ In the home, an unlabeled gun case may also be mistaken for a violin case. But if that same case were to be found in or near a gun range, it would be almost a foregone conclusion to most people that the case contained a firearm.¹⁸¹ To use another example, it would also be inconsistent to say that a person that places wrapped cellophane “bricks” or a gun case next to another incriminating item, like a syringe, still observes a reasonable expectation of privacy. Considering the surrounding circumstances of a search is not unfounded as an approach to Fourth Amendment jurisprudence. In fact, it is the prevailing Supreme Court-created doctrine. For example, in *Terry*, the Court not

¹⁷⁸ Allison M. Lucier, *You Can Judge a Container by Its Cover: The Single-purpose Container Exception and the Fourth Amendment*, 76 U. Chi. L. Rev. 1809, 1834.

¹⁷⁹ *United States v. Ross*, 456 U.S. 798, 823 (U.S. 1982) (“The protection afforded by the Amendment varies in different settings.”).

¹⁸⁰ *New York v. Class*, 475 U.S. 106, 124 (U.S. 1986) (Brennan J., dissenting) (“An individual’s justifiable expectation of privacy in a vehicle is less than in his home.”).

¹⁸¹ Lucier, *supra* note 176, at 1833 (“While a gun case may not look like a gun case to the average person, a gun case next to a box of bullets would begin to look more like a gun case to the average person.”).

only considered the observations made by the officer prior to the search, but also considered the officer's years of experience on the force.¹⁸² After weighing all these facts, including the competing privacy interests of the defendant, the Court came to the conclusion that the warrantless search was reasonable.¹⁸³

Courts, such as the 10th Circuit in *Donnes*, have been reluctant to include the context in which the container is found because of a concern that it may “permit a warrantless search of any container found in the vicinity of a suspicious item.”¹⁸⁴ This trepidation expressed by the 10th Circuit overstates the case. Containers that have nondescript characteristics, like a cardboard box, found in the vicinity of contraband, could never be considered a single-purpose container since the character of the container would not change regardless of its location.¹⁸⁵ Unexceptional containers, like a cardboard box, are used to carry an infinite variety of items. Although a box that is accompanied by incriminating evidence, like a syringe or white powder, may be more likely to carry contraband, nothing about the characteristics of the box change.¹⁸⁶ Outside of specific disclosures made by the owner of the box, the surrounding context of where the box is found is unlikely to make the characteristics of the box incriminating. Moreover, considering the totality of circumstances in which a container is found safeguards against such unconstitutional searches since the vicinity of contraband in which the container is found may be only a single, non-dispositive factor amongst a multitude of other factors the court will consider.

¹⁸² *Terry v. Ohio*, 392 U.S. 1, 30-31 (U.S. 1968).

¹⁸³ *Id.* at 30.

¹⁸⁴ *United States v. Donnes*, 947 F.2d 1430, 1438 (10th Cir. 1991).

¹⁸⁵ *Lucier*, *supra* note 176, at 1834.

¹⁸⁶ *Id.*

Once a suspect discloses information about the contents of a container to an officer, their privacy interest in that container is frustrated under the Fourth Amendment.¹⁸⁷ In *Jacobsen*, the Supreme Court stated that once a defendant reveals information to another, there is an assumed risk that the person may later reveal that information to government agents.¹⁸⁸ A government agent is not prohibited from acting on that information under the Fourth Amendment because it then becomes “nonprivate” information.¹⁸⁹ Likewise, if a person were to disclose information to an officer directly, a reasonable expectation of privacy could no longer exist because that information would become nonprivate. It would be illogical for an officer to disregard comments made by a defendant concerning the contents of the container. In *Cardona-Rivera* the suspect admitted that there was cocaine in the container prior to the officer’s search.¹⁹⁰ Since such disclosure would make the contents of the container readily apparent (even to a layman), an officer should be able to search the container without a warrant.

A label on the outside of a container is comparable to disclosures made by the owner of the container.¹⁹¹ Like information revealed by the owner, a label on a container is nonprivate information since it appears on the outside of the container for the world to see. Labeling a plain, black case “GUN GUARD,” “Phoenix Arms,” or “BUSHMASTER” removes the owner’s expectation that the contents will remain

¹⁸⁷United States v. *Jacobsen*, 466 U.S. 109, 117 (U.S. 1984).

¹⁸⁸ *Id.* (“It is well settled that when an individual reveals private information to another, he assumes the risk that his confidant will reveal that information to the authorities, and if that occurs the Fourth Amendment does not prohibit governmental use of that information”).

¹⁸⁹ *Id.* (stating that once frustration of the original expectation of privacy occurs, the Fourth Amendment does not prohibit governmental use of the now nonprivate information).

¹⁹⁰ United States v. *Cardona-Rivera*, 904 F.2d 1149, 1156 (7th Cir. 1990).

¹⁹¹ United States v. *Meada*, 408 F.3d 14, 19, 22 (1st Cir. 2005)(stating that the label on the gun case betrayed the container, revealing the container’s contents).

private.¹⁹² Since the information is nonprivate and because a label reveals the intended purpose of the container, a government agent should be able to act on it. These type of containers fall directly into the category of single-purpose containers under the *Sanders* footnote because “their contents can be inferred from their outward appearance.”¹⁹³

IV. Conclusion

The bedrock of American’s privacy rights, the Fourth Amendment requires all government searches to be reasonable.¹⁹⁴ When determining the reasonableness of an individual’s privacy expectations, courts must be cognizant of the balance between an individual’s right to privacy and the legitimate interests of the government.¹⁹⁵ Any court decision must balance these competing interests. It is also not sufficient that an individual has a subjective expectation of privacy. That expectation must also be one that is objectively considered reasonable.¹⁹⁶

A variation of the plain view doctrine, the single-purpose container exception is an efficient tool for police officers. The deference the exception provides to officers is beneficial to society because as less time and resources are devoted to seeking search warrants, more time can be spent on patrol, investigating crimes, and making arrests. The exception allows law enforcement officials to quickly locate and remove contraband on the street. In the overwhelming majority of cases involving the single-purpose container

¹⁹² Banks, 514 F.3d at 774 (noting that label on the defendant’s container made clear, even to the average person, that it contained a gun).

¹⁹³ Sanders, 442 U.S. at 764 n.13.

¹⁹⁴ U.S. CONST. amend. IV.

¹⁹⁵ Maryland v. Buie, 494 U.S. 325, 331 (U.S. 1990).

¹⁹⁶ Katz v. United States, 389 U.S. 347, 356 (U.S. 1967)(Harlan J., concurring).

exception, the officers' expertise and experience did not lead them astray.¹⁹⁷ In each case, the officers' insights were accurate and the containers in question were found to have contraband when searched.¹⁹⁸ It would also be unworkable to force upon officers the difficult task of making these important determinations without taking into account the officer's experience¹⁹⁹ or the surrounding circumstances.²⁰⁰ Since law enforcement officers are specifically trained to make these types of determinations, courts should weigh the subjective knowledge and experience of the searching officer when determining the existence of a single-purpose container.

The totality of circumstances should also be considered when making the determination of whether a container reveals its contents. Containers are never found separate from the rest of the world. Court precedent has often considered the totality of the circumstances in other cases involving warrantless searches or seizures pursuant to the Fourth Amendment.²⁰¹ It seems only logical to allow officers to consider the context in which the container is found when determining whether it is one of the "rare"²⁰² single-purpose containers. Disclosures about the contents of a container, either through

¹⁹⁷ *United States v. Meada*, 408 F.3d 14, (1st Cir. 2005).; *United States v. Williams*, 41 F.3d 192, 196-97 (4th Cir 1994).; *United States v. Corral*, 970 F.2d 719, 725 (10th Cir. 1992).; *United States v. Cardona-Rivera*, 904 F.2d 1149 (7th Cir. 1990).

¹⁹⁸ *Texas v. Brown*, 460 U.S. 730, 746 (U.S. 1983)(Powell J., concurring)(discussing how a trained officer may be able to make inferences based on their experience that an untrained layperson would not be able to make).

¹⁹⁹ *Ornelas v. United States*, 517 U.S. 690, 699 (U.S. 1996)(stating that an officer "views the facts through the lens of his police experience and expertise.").

²⁰⁰ *United States v. Gust*, 405 F.3d 797, 802 (9th Cir 2005)(noting the difficulty in evaluating a container without considered the context or the subjective inferences made by the searching officer).

²⁰¹ *Terry v. Ohio*, 392 U.S. 1, 30-31 (U.S. 1968).; *California v. Ciraolo*, 476 U.S. 207, 209 (U.S. 1986).; *California v. Acevedo*, 500 U.S. 565 (U.S. 1991).

²⁰² *Brown*, 460 U.S. at 751 (Stevens J., concurring)(discussing that an opaque balloon may be "one of those rare single-purpose containers.").

the suspect directly or through the labels on a container, are also nonprivate information that an officer should be able to act on.²⁰³

Considering the totality of circumstances while deferring to the expertise and experience of the searching officer properly balances an individual's privacy rights under the Fourth Amendment with legitimate government interests. Deference to a police officer's expertise allows law enforcement the flexibility to make on-the-spot determinations, promoting a government interest in public safety. While police deference may seem to tip the scale in favor of the government, the totality of circumstances test prevents this by requiring the inferences made by an officer be only one of many factors, preserving an individual's privacy rights. Considering either element alone may allow one interest to outweigh the other, but by implementing both factors together the scale is properly balanced.

²⁰³ United States v. Jacobsen, 466 U.S. 109, 115 (U.S. 1984)(noting that authorities acting off of information revealed to them, or nonprivate information, is not prohibited under the Fourth Amendment).